

Before the
COPYRIGHT ROYALTY BOARD
United States Copyright Office
Washington, DC

In re

Distribution of Digital Audio Recording
Royalty Funds

CONSOLIDATED
Docket No. 2008-3 CRB DD
(2007-2011 SRF)

**REPLY TO EUGENE CURRY’S OPPOSITION TO AARC’S MOTION TO REJECT
EUGENE CURRY’S LATE PETITION TO PARTICIPATE**

Pursuant to Section 350.6(f) and in reply to Eugene Curry’s (“Curry”) opposition dated May 1, 2019, the Alliance of Artists and Recording Companies (“AARC”) hereby files its reply to Curry’s filing styled “Reply to AARC Motion to dismiss Eugene “LAMBCHOPS” CURRY LATE PETITION TO PARTICIPATE IN THE CONSOLIDATED DART DISTRIBUTION SOUND RECORDING FUND.” 37 C.F.R. § 350.6(f) (2019); Reply to AARC Motion to Dismiss Eugene “Lambchops” Curry Late Petition to Participate in the Consolidated DART Distribution Sound Recording Fund, Docket No. CONSOLIDATED 2008-3 CRB-DD (2007-2011 SRF) (May 1, 2019) (“Curry Opposition”).

On April 29, 2019, AARC filed its Motion to Reject Eugene Curry’s late Petition to Participate on the ground that Curry failed to establish his “significant interest” in the 2008 and 2010 DART Sound Recordings Fund (“SRF”)/Copyright Owners Subfunds portion of this consolidated proceeding¹. 17 U.S.C. § 803(b)(2)(C) (2017); 37 C.F.R. § 351.1(b)(2)(i)(C), (c); Motion to Reject Eugene Curry’s Late Petition to Participate, In the Matter of Distribution of Digital Audio Recording Royalty Funds, Docket No. CONSOLIDATED 2008-3 CRB DD (2007-2011 SRF) (Apr. 29, 2019) (“AARC Motion”); Petition to Participate in the Consolidated

¹ As noted in the AARC Motion, Curry has only filed a timely claim and petitioned to participate in the 2008 and 2010 SRF/Copyright Owners Subfunds in this consolidated proceeding. AARC Motion at 5; Curry Late PTP at 1.

DART Sound Recording Fund, In the Matter of Distribution of Digital Audio Recording Funds, Docket No. CONSOLIDATED 2008-3 CRB-DD (2007-2011 SRF) (Apr. 24, 2019) (“Curry Late PTP”). Specifically, Curry’s late petition did not include a proper description of his interest. 17 U.S.C. § 803(b)(1)(B); 37 C.F.R. § 351.1(b)(2)(i)(C); Curry Late PTP.

AARC respectfully requests that the AARC Motion be granted because neither Curry’s petition nor his opposition along with the attachment, filed in response to the AARC Motion, provided a description of “the petitioner’s interest in the subject matter of th[is] proceeding.” 17 U.S.C. § 803(b)(1)(B); see also 37 C.F.R. § 351.1(b)(2)(i)(C). None of these documents set forth any basis upon which the Copyright Royalty Board (“CRB”) could conclude that Curry has any interest, let alone a “significant interest” in this consolidated proceeding. 17 U.S.C. § 803(b)(2)(C); 37 C.F.R. § 351.1(b)(2)(i)(C), (c).

ARGUMENT

Curry Opposition, similar to the Curry Late PTP, reflected a profound misunderstanding as to the fund and subfund in which Curry, as a songwriter or a performing artist, whether featured or non-featured, is an interested party. Curry Opposition at 1-2; see also AARC Motion at 6-7. In his opposition, Curry stated the following in support of his significant interest in the DART SRF/Copyright Owners Subfund²:

1. Eugene Curry is the *song writer* of the composition “SOMEBODY LOVES YOU BABY (You Know Who It Is), and the composition “BURNIN” (also title of album). 2. “LAMBCHOPS “ is the *featured artist* as the one who recorded all sounds on a digital audio disk, and therefore Owns the Digital Musical EMBODIMENT on MCA disc. “DISK, and Disc, are two separate digital audio recording medium. “LAMBCHOPS” *created and recorded the instrumental of the composition* on MDD DISK. “THIS” in my opinion, IS MY DESCRIPTION OF OUR INTERESTS’ in these proceeding’s. 3. TAJAI MUSIC INC. is the administrator for Eugene Curry not “LAMBCHOPS “.

² See id.

“LAMBCHOPS” is an *artist, producer, and private contractor* who also produce, and is paid to create music for other artist and songwriters.

Curry Opposition at 1-2 (emphasis added).

In attempting to establish an interest in the 2008 and 2010 DART SRF/Copyright Owners Subfunds portion of this consolidated proceeding, Curry claimed that “Eugene Curry” is the “song writer of the composition.” Id. at 1. However, as AARC pointed out in its original motion, song writers of the underlying music are not the “interested copyright part[ies]” in DART SRF/Copyright Owners Subfund distribution proceedings. 17 U.S.C. §§ 1001(7)(A), (C), 1006(b)(1); AARC Motion at 7. Instead, they are “interested copyright part[ies]” in the DART Musical Works Fund (“MWF”) distribution proceeding. 17 U.S.C. §§ 1001(7)(B), 1006(b)(2); AARC Motion at 7. As evidenced by his own attachment to the Curry Opposition, Curry was a participant/claimant in the 1995 - 1998 DART MWF distribution proceeding and received royalties from the 1995 and 1997 DART MWF/Writers and Publishers Subfunds. Report of the Arbitration Panel, In the Matter of Distribution of DART Royalty Funds for 1995, 1996, 1997 and 1998, Docket No, 99-3 CARP DD 95-98, at 1 (Nov. 9, 2000).

To establish his “significant interest”, Curry further asserted that “LAMBCHOPS” is a “featured artist as the one who recorded all sounds on a digital audio disk” and therefore owns “the Digital Musical EMBODIMENT on MCA disc.”³ Curry Opposition at 1. Specifically, Curry claimed that he “created and recorded the instrumental of the composition on MDD DISK.” Id. By making these statements, Curry appeared to argue that he has an interest as a performing artist, whether featured or non-featured. Id. Nonetheless, as detailed in the AARC

³ While Curry attempted to distinguish the difference between “Eugene Curry” and “Lambchops” in his opposition, it is unclear to AARC how this distinction helps Curry to establish his interest in the 2008 and 2010 DART SRF/Copyright Owners Subfunds portion of this consolidated proceeding.

Motion, Curry’s status as a featured artist or non-featured artist is irrelevant to his interest in the current proceeding because Curry did not file any claims to the SRF/Featured Recordings Artist Subfund in any royalty years included in this consolidated proceeding⁴ and non-featured performers’ DART royalties are not subject to distribution proceedings. 17 U.S.C. §§ 1001(7)(C), 1006(b)(1); AARC Motion at 6.

Finally, Curry also alleged that “LAMBCHOPS” “is an artist, producer, and private contractor who also produce, and is paid to create music for other artist and songwriters.” However, producers are not among the “interested copyright part[ies]” as defined in Section 1001(7)(A) of the Audio Home Recording Act, and therefore, are not entitled to any shares of DART SRF/Copyright Owners Subfund royalties. 17 U.S.C. §§ 1001(7)(A), 1006(b)(1). In fact, producers are not interested copyright parties in any of the DART proceedings. *Id.* §§ 1001(7), 1006(a), (b).

To be entitled to a share of the DART Sound Recordings Fund (“SRF”)/Copyright Owners Subfund royalties, the party must be “the owner of the exclusive right under section 106(1) of this title *to reproduce a sound recording* of a musical work that has been embodied in a digital musical recording . . .” *Id.* §§ 106(1), 1001(7)(A), 1006(b)(1) (emphasis added). Therefore, a filer’s Petition to Participate in a DART SRF/Copyright Owners Subfund distribution proceeding must include facts establishing that such party owns the *reproduction right*, in a *sound recording* of a musical work. Neither the Curry Late PTP nor Curry Opposition have satisfied this statutory and regulatory “significant interest” requirement. 17 U.S.C. § (b)(2)(C); 37 C.F.R. § 351.1(b)(2)(i)(C), (c); see also 17 U.S.C. § 803(b)(1)(B).

⁴ See supra note 1.

While Curry asserted that the statements discussed above qualify as a description of his interest in this proceeding, in reality, none of the statements establish that Curry owns the reproduction right of a sound recording. Curry Opposition at 1. Instead, his statements support AARC's argument that while Curry might have interests as a songwriter or a performing artist, featured or non-featured, the 2008 and 2010 DART SRF/Copyright Owners Subfunds portion of this consolidated proceeding is not the proper venue for litigating these matters. See AARC Motion at 6-7. Since a failure to demonstrate a "significant interest" in the proceeding is a fatal defect, the Curry Late PTP should be rejected pursuant to statutory and regulatory requirements. 17 U.S.C. § 803 (b)(2)(C); 37 C.F.R. § 351.1 (c).

WHEREFORE, in view of the foregoing and the fact that Curry has been granted numerous attempts to file a valid Petition to Participate but failed to do so, AARC respectfully requests that the CRB grant AARC's motion to reject the Curry Late PTP and dismiss Curry from this consolidated proceeding.

Respectfully submitted,
On Behalf of AARC

/s/Linda R. Bocchi, Esq.
Linda R. Bocchi, Esq.
DC BAR# 338012
VA BAR# 77599
Executive Director
Alliance of Artists and Recording Companies
700 N. Fairfax Street, Suite 601
Alexandria, VA 22314
(703) 535-8101 (phone)
(703) 535-8105 (facsimile)
lbocchi@aacroyalties.com

May 2, 2019

Proof of Delivery

I hereby certify that on Thursday, May 02, 2019 I provided a true and correct copy of the Reply on 'Reply to AARC Motion to dismiss Eugene "LAMBCHOPS" CURRY LATE PETITION TO PARTICIPATE IN THE CONSOLIDATED DART DISTRIBUTION SOUND RECORDING FUND' to the following:

Kelly, Herman, represented by HERMAN KELLY MR served via Electronic Service at hermankelly@att.net

Powell, David, represented by david powell served via Electronic Service at davidpowell008@yahoo.com

Curry, Eugene, represented by Eugene Curry Mr. served via Electronic Service at lambchopsmusic@voicenet.com

Signed: /s/ Linda R Bocchi